MEDIATION

CASE SUMMARY

Complaint against the Leisure and Cultural Services Department for failing to properly manage the "licensed area" at the light refreshment restaurant premises leased to the complainant and recovering from him the costly expenses incurred by the reinstatement works

The Complaint

The complainant was the former lessee of a light refreshment restaurant ("the restaurant") at a facility of the Leisure and Cultural Services Department (LCSD). He took over the operation of the restaurant in April 1998. However, as business was poor, he closed the restaurant in March 2000. In January 2001, he received a letter from LCSD pointing out that he had not reinstated the "licensed area" at the restaurant premises in accordance with the provisions in the licence agreement and asking him to pay the expenses incurred by the reinstatement works and the outstanding monthly licence fees, totalling more than $79,000. Feeling aggrieved that LCSD had failed to properly manage the "licensed area" at the restaurant premises leased to him, he lodged a complaint with this Office against the Department for:

(a) failing to explain to him the contents of the licence agreement when he went through the transfer formalities for the restaurant;

(b) allowing cleaning workers to use the electricity of the restaurant without his consent;

(c) failing to carry out proper repair works on the lavatory in the restaurant;

(d) failing to provide lighting for the access road between the facility and the restaurant;

(e) failing to repair a hole on the wall of the restaurant kitchen immediately, thus affecting the sanitation of the restaurant; and

(f) recovering from him the costly expenses incurred by the reinstatement works without showing him the invoices or allowing him to see for himself whether the works had been completed.

Mediation Service

2. Having examined the case as well as the information and comments submitted by LCSD, this Office decided to deal with the complaint by means of **mediation**.

3. Mediation is another Alternative Dispute Resolution method. It is a voluntary and confidential process through which the complainant meets with representatives of the complainee organisation under our arrangement. The two parties frankly discuss the issues of complaint and explore possible solutions together, with investigators from this Office acting as neutral facilitators, neither offering opinions nor making decisions. They simply provide neutral grounds for the parties concerned to meet and discuss their differences in a bid to reach an agreement.

4. Mediation enables complaints to be dealt with more speedily and more amicably, giving greater satisfaction to both complainants and the organisations concerned.

The agreement reached by both parties

5. Under our arrangement, the complainant and representatives of LCSD attended the mediation session held in our Office in June 2001 and had an in-depth discussion of the issues of complaint. After looking into the crux of the problem and negotiating possible solutions, the two parties finally reached the following agreement:

(a) LCSD agreed that in future, it would explain to the lessees the contents of the licence agreement and remind them of their obligations when they signed the agreement or went through the transfer formalities so as to avoid unnecessary conflicts.

(b) LCSD agreed that it would follow up the matter if the complainant could produce electricity bills or other concrete evidence to prove that cleaning workers had used the electricity of the restaurant, thus resulting in an increase in the electricity expenses of the restaurant.

(c) LCSD would closely monitor the lighting installation outside the facility to see if there was adequate lighting in the access road between the facility and the restaurant. It would also adjust the timer of the lights according to the sunshine duration

in different seasons. Besides, it also agreed that it would lay down clear guidelines on the procedures for approval of applications for installation of additional lighting made by the lessees so as to increase their competitiveness in business.

(d) LCSD agreed that in future when repair works had to be carried out in the "licensed area" where the lessees operated business, it would take extra care not to make the lessees incapable of fulfilling legal obligations pertaining to their business and thus breaching the law.

(e) The complainant would write to LCSD to apply for repayment of the expenses incurred by the reinstatement works by instalments, stating the reason for making the application, the proposed number of instalments and the amount of each instalment. He also promised that he would increase the amount of the monthly payment and reduce the number of instalments when his financial situation improved. Upon receipt of his application, the Department would give serious consideration to it and take appropriate follow-up actions on the matter.

Final Remarks

6. This Office was pleased to note that LCSD had accepted the above agreement and taken active follow-up actions on the matter so that the payments in default could be settled.

Office of The Ombudsman
Ref : OMB 2001/1029
December 2001